IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7685 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAXMI NARAYAN MANDIR TRUST

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7685 of 1998

MR N.D NANAVATY with Mr. HC BUCH for Petitioner

MR HARSHA DEVANI AGP for Respondents Nos. 1,3-4

MR JJ YAJNIK for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/02/2003

ORAL JUDGEMENT

The petitioner before this Court is a Public Charitable Trust which manages the Laxmi Narayan Temple,

situated at Mahuva, District-Bhavnagar. The matter at dispute is the part of land bearing - Survey Nos. 230, admeasuring 31 Acres 26 Gunthas, and the land bearing Survey No. 221, admeasuring 1 Acre 1 Guntha, situated at Mahuva. It is the claim of the petitioner-Trust that the Laxmi Narayan Temple at Mahuva is more than 500 years old. The then ruler of the State of Bhavnagar had given certain grants to the said temple for the maintenance of the temple, the Mahant and the Pujaris. The land in dispute was also part of such grant. However, the land in dispute was acquired by the then State of Bhavnagar for laying a railway line between Bhavnagar & Talaja. The said railway line was being used by the railways and was then known as 'Tramway'. For last some years, the said narrow gauge railway line has been abandoned by the Western Railways and instead a broad gauge line has been laid. Since the laying of the broad-gauge railway line, the narrow gauge railway tracks have also been removed from the disputed land. Thus, the disputed land has become open and is now not required by the Railways.

In the circumstances, the petitioner-Trust has made its claim for regrant of the disputed land to the Trust. Reliance is placed on Rule 328 of the Land Acquisition Manual. It is submitted that now when the disputed land is not utilized by the railways and the same is not required either, the disputed land should be regranted to the petitioner-Trust. It is also submitted that on account of indecisiveness of the railways, the valuable piece of land is being wasted and is being encroached upon.

Be that as it may, merely because the land acquired for the purpose of railway is not now utilized by the Railways, the petitioner-Trust does not get a right to the said land. Whether it is utilized or not, the disputed land is of the ownership of the Railways. The petitioner-Trust cannot claim a right over the disputed land as an owner or as a former owner. If at all the land is available for disposal, the same is required to be disposed of in the manner provided in the Land Acquisition Manual. The petitioner cannot claim a right to priority. No mandamus, therefore, can be issued in favour of the petitioner-Trust directing the Railways to make offer of or to grant the land to the petitioner-Trust.

In the present case, no body has appeared for the Railways. No counter has either been filed. In the circumstances, it is not known whether the Railways intends to retain the disputed lands for its future use

or to dispose of the same. If the petitioner-Trust is interested in grant of the said lands, the petitioner-Trust may make representation to the respondent no. 2 herein. If such a representation is made, the respondent no. 2 shall consider and decide the same within three months from the date of the receipt of the representation. The decision on such representation shall be communicated to the petitioner-Trust forthwith.

Subject to the above direction, the petition is dismissed. Rule is discharged. There shall be no order as to costs.

[Ms.R.M Doshit, J.]

Prakash*